



## INTRODUCTION

### Front Page News

The dominant story this week was the abortion bill passed last week by the Senate and its circuitous journey through the House before being passed late in the day on Thursday. Given the contentious and emotional nature of any debate about abortion, as much focus was given to the way in which these provisions were brought forth as to their actual content. After the Senate rushed their bill through quickly last week Gov. McCrory was publicly critical of the process, and House leaders made a point of allowing a long, open and public hearing on the bill early in the week. During this hearing the Governor's appointed Secretary of Health and Human Services expressed concern about the impact of the bill and urged the legislature to slow down and study the issues before taking action. Despite this, and a pledge by House sponsors to work with the Department on their concerns (which many took as a signal that action on the bill would decelerate), the following day the House tacked nearly identical provisions onto a bill about motorcycle safety that was scheduled to be heard in committee, with no public notice. The bill was quickly passed out to the floor, where after 3 hours of debate it was sent back to the Senate for what is expected to be a final vote before landing on the Governor's desk.

The process by which the bill was moved, the controversial nature of the subject matter and the resulting mass protests at the General Assembly (including the largest-yet Moral Monday gathering) made national news. An editorial in the New York Times, which lambasted the Republican majority for a variety of measures undertaken this session, drew strong reactions from both sides of the political spectrum. The continued impasse between the chambers on tax reform and the state budget, combined with the feeling that the end of session (predicted by Speaker Tillis to be no later than July 4) was nowhere in sight, added to the tension in the legislative buildings.



## NORTH CAROLINA GROUND WATER ASSOCIATION



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Despite this, a number of significant measures saw action this week, including an omnibus Regulatory Reform package, a measure to move control of the Charlotte airport from the city to a regional authority, and a bill that would transfer responsibility for school construction from Boards of Education to County Commissions. The latter bill was soundly defeated in committee (despite an amendment to remove Wake County from its scope), but kept alive through a fiercely-debated procedural motion on the House floor. Many other bills continue to languish in committee, even as several Chairmen have indicated that they have called their last meeting before adjournment. Whether this is posturing intended to put pressure on the opposing chamber and interest groups, or a genuine sign that session is winding down, is not yet clear.

The End is Near (or, Not)

Both House and Senate leaders indicated the negotiations on the tax reform package and budget will continue through the weekend, and expressed hope that an agreement is near at hand, allowing session to wrap up within the next two weeks. Some insiders are still skeptical that a deal can be reached on taxes, and that the effort will be abandoned, or dragged out indefinitely. If session is coming to a close, however, hold on to your hats. The last weeks of any session are the most hectic, and the most dangerous (as a slew of bills tend to move at the last possible moments, including some previously thought to be dead for the year). As always we'll be in the thick of it, and will keep you posted as things progress.

## BILL UPDATES

HOUSE BILL 662, Limited License/Install Backflow Assemblies. The original House version of this bill was amended by a Senate Committee to add a requirement that anyone (who does not have a Class I or Class II plumbing license) must obtain a limited plumbing contractor license if they “engage in the contracting or installation, repair, or replacement of (1) water purification systems or components thereof and (2) components, pumps, or pumping equipment associated with “water well systems.” On behalf of **the North Carolina Ground Water Association**, we objected strongly to this language and worked with the House sponsors, the interested members the Senate and various stakeholders to remove those provisions. We were successful in building a consensus that the provisions should be removed, as the sponsors made clear they would not move the bill until our concerns were satisfied. The Plumbing Board, at whose request the provisions were added, consented to their removal so that the bill could move forward. A Conference Report (which is a summary of the final bill approved by both the House and the Senate) did **NOT** include the provisions above that we objected to and the bill was approved by both chambers. **The Conference Report for the bill was adopted by the House and Senate and sent to the Governor to be signed into law.**

SENATE BILL 112, Create Jobs Through Regulatory Reform. The provisions of this bill, originally filed as Amend Environmental Laws 2013, were completely removed in the House Regulatory Reform Committee and replaced with new provisions to improve and streamline the regulatory process to stimulate job creation, eliminate unnecessary regulation, and make various other statutory changes. These provisions primarily affect government agencies and licensing boards. After several revisions to the bill in the House Regulatory Reform Committee, the House Commerce and Job Development Subcommittee on Energy and Emerging Markets, and on the House floor, the bill includes the following provisions:

## **PART I. IMPROVE RULE-MAKING PROCESS**

- amends the Administrative Procedure Act to define *policy* as “any nonbinding interpretive statement within the delegated authority of an agency that merely defines, interprets, or explains the meaning of a statute or rule. The term includes any document issued by an agency which is intended and used purely to assist a person to comply with the law, such as a guidance document”;
- provides that, before an agency adopts a permanent rule change that would require the expenditure or distribution of funds subject to the State Budget Act, it must obtain certification from the Office of State Budget and Management that the funds that required by the proposed rule change are available;
- requires the agency to submit the text of the proposed rule change, an analysis of the proposed rule change, and a fiscal note on the proposed rule change to the Office at the same time as the agency submits the notice of text for publication;
- amends the definition of *substantial economic impact* as an aggregate financial impact on all persons affected of at least \$1 million in a 12-month period (was, \$500,000);
- requires the notice of the proposed text of a rule to include the text of the proposed rule, unless the rule is a re-adoption without substantive changes to the existing rule;
- provides that any rule for which the agency that adopted the rule has not conducted a review in accordance with this section will expire on the date set in the schedule established by the Rules Review Commission;
- provides that, if G.S. 150B-21.3A becomes law, the Rules Review Commission must subject rules adopted by the Environmental Management Commission related to surface water quality and wetlands to review in the first year that the Rules Review Commission establishes for the review of existing rules in accordance with G.S. 150B-21.3A; and
- requires the Joint Legislative Administrative Procedure Oversight Committee to study the exemptions from rule making and for each exemption to evaluate the continued need for the exemption and the potential consequences of repeal of the exemption.

## **PART II. STATE AND LOCAL GOVERNMENT REGULATIONS**

- requires a city or county, when a use constituting a violation of a zoning or unified development ordinance is in existence prior to adoption of the zoning or unified development ordinance creating the violation, to bring an enforcement action within 10 years of the date of the termination of the grandfathered status, unless the violation poses an imminent hazard to health or public safety;
- prohibits a city or county from requiring a private contractor to abide by any restriction that the city or county could not impose on all employers, such as paying minimum wage or providing paid sick leave to its employees, as a condition of bidding on a contract;
- prohibits a zoning or unified development ordinance from differentiating in terms of the regulations applicable to fraternities or sororities between those fraternities or sororities that are approved or recognized by a college or university and those that are not;
- provides that any student enrolled at a constituent institution who is accused of a violation of the disciplinary or conduct rules has the right to be represented by a licensed attorney or non-attorney advocate who may fully participate during any disciplinary procedure or other procedure adopted and used regarding the alleged violation unless the constituent institution has implemented a "Student Honor Court" which is fully staffed by students to address such violations, or for any allegation of "academic dishonesty";
- requires the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to amend its Records Retention and Disposition Schedule Manual to provide

that if a Medicaid service has been eliminated by the State, the provider must retain records for three years after the last date of the service, unless a longer period is required by federal law;

- directs the Program Evaluation Division to evaluate the structure, organization, and operation of the various independent occupational licensing boards, and submit its findings and recommendations to the Joint Legislative Program Evaluation Oversight Committee and the Joint Legislative Administrative Procedure Oversight Committee at a date to be determined;
- prohibits a city or county from enacting or enforcing an ordinance, rule, or regulation that requires an employer to assume financial, legal, or other responsibility for the mitigation of the impact of their employees' commute or transportation to or from the employer's workplace, which may result in the employer being subject to a fine, fee, or other monetary, legal, or negative consequences;

### **PART III. BUSINESS AND LABOR REGULATIONS**

- amends the definition of a Bed and breakfast home and allows a bed and breakfast to serve three meals/day;
- amends the provisions regarding child care providers' criminal history checks to define a *provisional provider*, and requires the criminal history check of a person required to be conducted by the Department of Health and Human Services to be completed within 15 calendar days of the receipt of the application from the child care provider;
- allows notice of cancellation, termination, or nonrenewal of a workers' compensation insurance or employers' liability insurance policy written in connection with a policy of workers' compensation insurance to also be given by any method permitted for service of process pursuant to Rule 4 of the North Carolina Rules of Civil Procedure;
- provides that a principal contractor, intermediate contractor, or subcontractor who sublets any contract for the performance of work may not be held liable to any employee of such subcontractor if either (i) the subcontractor has a workers' compensation insurance policy in effect on the date of injury regardless of whether the principal contractor, intermediate contractor, or subcontractor failed to timely obtain a certificate from the subcontractor; or (ii) the policy expired or was cancelled prior to the date of injury provided the principal contractor, intermediate contractor, or subcontractor obtained a certificate at any time before subletting such contract to the subcontractor and was unaware of the expiration or cancellation;
- allows a private, nonpublic employer in the State to provide a preference to a veteran for employment and to spouses of honorably discharged veterans who have a service-connected permanent and total disability, and provides that granting of this preference is not a violation of any State or local equal employment opportunity law; and

### **PART IV. ENVIRONMENTAL AND PUBLIC HEALTH REGULATIONS**

- prohibits permitted scrap tire collectors from contracting with a scrap tire processing facility unless the processing facility documents that it has access to a facility permitted to receive the scrap tires;
- requires the State Building Code to contain provisions requiring the installation of electrical carbon monoxide detectors at a lodging establishment, and requires lodging establishments to install carbon monoxide detectors in every enclosed space having a fossil fuel burning heater, appliance, or fireplace and in any enclosed space, including a

sleeping room, that shares a common wall, floor, or ceiling with an enclosed space having a fossil fuel burning heater, appliance, or fireplace

- includes provisions regarding the reclaimed water irrigation setback rule;
- directs the Commission for Public Health to amend and clarify its rules for the implementation of the prohibition on smoking in restaurants and bars no later than January 1, 2014; and
- requires the Environmental Review Commission to study the statutory models for establishing, operating, and financing certain organizations that provide water and sewer services in the State.

**The bill as amended was approved by the House and will next be sent to the Senate to consider the changes made by the House.**

## LEGISLATION ENACTED

SENATE BILL 264, Abate Nuisances/Drug Sales from Stores, which provides that an activity sought to be abated need not be the sole purpose of the building or place in order for it to constitute a nuisance under NCGS Chapter 19, was signed into law by the Governor on July 3, 2013. **Effective: July 3, 2013, and applies to nuisance actions filed on or after that date.**

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